In the High Court of Judicature at Madras

Dated: 04/07/2002

Coram

The Hon'ble Mr.Justice P.D.DINAKARAN

Second Appeal No.215 of 1989

R.Logabiraman ..Appellant

-Vs-

1.Thaiyalnayaki Ammal
2.Palaniammal
3.Muthu
4.Nirmala
5.Panneerselvam
6.Arumugham
7.Sethu
8.Sarojini
9.Nirmala
10.Lakshmi
11.T.Manohar
12.Sathyavathi ..Respondents

Appeal against the judgment and decree dated 24.6.1987, made in A.S.No.10 of 1984 on the file of the learned Subordinate Judge, Poonamallee, against the judgment and decree dated 26.11.1982, made in O.S.No.230 of 1976 on the file of the learned Additional District Munsif, Poonamallee.

!For Appellant : Mr.P.Veeraraghavan

^For Respondents : No representation

:J U D G M E N T

The unsuccessful plaintiff before the Courts below is the appellant in the second appeal.

2. The plaintiff laid the suit O.S.No.230 of 1976 on the file of the learned Additional District Munsif, Poonamallee, to declare his title over the suit property, to recover possession of the suit property from defendants 3 to 19 after removing the superstructure put up on the foundation of the suit property and for consequential mesne profits, based on Ex.A2, a settlement deed dated 25.2.1970, executed by one Pankajammal who is nonetheless the grand mother of the plaintiff.

3. The suit was originally resisted by Ramaswami Pillai and Rukmani Ammal, viz., defendants 1 and 2 respectively. Since the first defendant died during the pendency of the suit, his legal representatives were impleaded as party respondents, who are respondents 2 to 7 in the second appeal and the second defendant Rukmani Ammal died during the pendency of the first appeal and her legal representatives were impleaded, who are respondents 8 to 12 in the second appeal. Pending the above second appeal, the first respondent, who is the wife of Ramaswami Pillai also died.

4. For the purpose of convenience, the parties are referred to as arrayed in the suit.

5. According to the plaintiff, the suit property originally belonged to one Pankajammal, wife of Padmanabha Naidu. Padmanabha Naidu and Pankajammal had three daughters, namely, Dilli Ammal, Rukmani Ammal, the second defendant and Radha Ammal. The plaintiff is the son of Dilli Ammal. Alleging that the suit property was settled in favour of the plaintiff under Ex.A2 dated 25.2.1970, thereafter, the plaintiff was in possession of the suit property and subsequently, leased out for rent to the first defendant, who put up construction on the suit property and therefore, the plaintiff claims title over the suit property based on the settlement deed dated 25.2.1970, marked as Ex.A2 and for recovery of possession of the same as well as consequential mesne profits.

6. Per contra, the defendants 1 and 2 resisted the suit on the ground that the said Pankajammal also executed a settlement deed dated 27.7.1972 in favour of the second defendant. On the strength of the settlement deed dated 27.7.1972, the second defendant sold the suit property to the first defendant.

7. Upon the above rival contentions, the learned Additional District Munsif, Poonamallee, framed the following relevant issues:

(i) Whether the plaintiff is entitled for declaration?

(ii) Whether the plaintiff is entitled for recovery of possession of the suit property?

(iii) Whether the plaintiff is entitled for mesne profits as rent, if so, the quantum of mesne profits?

8. To substantiate their contentions, the plaintiff examined himself as P.W.1 along with one Krishnamoorthy, who is the attestor to Ex.A2 and marked 11 documents as Exs.A1 to A11, of which Ex.A1 is the certified copy of the parent deed of the suit property dated 20.5.1943, executed by one Chinnaiah Maistry and Munusami Maistry in favour of Pankajammal, and Ex.A2 is the settlement deed dated 25.2.1970, executed by Pankajammal in favour of the plaintiff.

9. The second defendant's son, namely, Kannaiah, examined himself as D.W.1 along with one Sivanesan, who is the son-in-law of the first defendant, administrator of the suit property and another independent witness one Raman,

who is the attestor to Ex.B3 and marked 23 documents as Exs.B1 to B23, of which Ex.B2 is the original parent deed of the suit property, dated 20.5.1943 executed by Chinnaiah Maistry and Chengaiah Maistry in favour of Pankajammal, the certified copy of which was marked as Ex.A1, Ex.B3 is the settlement deed dated 27.7.1972 with regard to the suit property executed by Pankajammal in favour of the second defendant, namely, Rukmani Ammal, Ex.B5 is the chitta with regard to the suit property, Ex.B8 is the electricity consumer card with regard to the suit property and Exs.B9 to B21 are the documents relating to the demand notice of property tax and receipt for payment of property tax/kist.

10. Appreciating the oral and the documentary evidence, the Additional District Munsif, Poonamallee, held that the said Pankajammal never intended to settle the suit property in favour of the plaintiff under Ex.A2 even though the same is mentioned as item No.2 in Ex.A2, by a judgment and decree dated 26.11.1982 and the same was, on appeal in A.S.No.10 of 1984, by the learned Subordinate Judge, Poonamallee, confirmed by judgment and decree dated 24.6.1987. Hence, the second appeal.

11. The above second appeal was admitted on the following substantial question of law:

"Whether the Courts below properly construed the settlement deed dated 25.2.1970, marked as Ex.A2, executed by Pankajammal in favour of the appellant/plaintiff?"

12. Mr.P.Veeraraghavan, learned counsel appearing for the appellant, submits that the said Pankajammal having executed the settlement deed dated 25.2.1970 under Ex.A2 in favour of the plaintiff/appellant, ceased a right to execute another settlement deed dated 27.7.1972 under Ex.B3 in favour of the second defendant, namely, Rukmani Ammal, as she had no right in law to settle the suit property in favour of the second defendant, particularly when it is not disputed that the suit property was specifically mentioned as item No.2 under Ex.A2 with definite boundaries and therefore, the settlement of the suit property in favour of the plaintiff under Ex.A2 dated 25.2.1970 cannot be annulled, merely because, there is no reference of parent deed of the suit property in the recitals of the document.

13. I have given a careful consideration to the submission of the learned counsel appearing for the appellant.

14. Admittedly, the suit property was described in both the settlement deeds, namely, Ex.A2 dated 25.2.1970 executed in favour of the plaintiff and Ex.B3 dated 27.7.1972 executed in favour of the second defendant, namely, Rukmani Ammal. The boundaries of the suit property as well as item No.2 mentioned in Ex.A2 and the schedule property mentioned in Ex.B3 also tally and therefore, there is no dispute as to the fact that the suit property was mentioned in both Exs.A2 and B3. It is only under such circumstances, Mr.P.Veeraraghavan, learned counsel appearing for the appellant, contends that the settlor Pankajammal having settled the suit property in favour of the plaintiff, had no right to settle the same to the

second defendant without cancelling the settlement deed dated 25.2.1970, marked as EX.A2.

15. It is well settled in law that what property is actually conveyed depends upon its recitals mentioned therein and upon the intention of the executor of the document, but not merely based on the description of the property mentioned in the schedule, because the document has to be construed as a whole and the real intention of the parties has to be gathered, not merely from what ex facie is stated as the description of the property in the schedule, but from the totality of the recitals in the document. It is also well settled in law that the description of the property in the schedule to the document could not be given any overriding importance over the actual intention of the executor and such an intention of the executor could be gathered from the words used in the document, as held by the Kerala High Court in SUMATHY AMMA v. SANKARA PILLAI, reported in AIR 1987 Kerala 84.

16. If that be so, the Courts below, having found that Pankajammal, the executor of the settlement deed dated 27.7.1972, marked as Ex.B3 , had specifically mentioned in the recitals of the deed that the property purchased under Exs.A1 and B2, namely, the suit property was settled in favour of the second defendant whereas the properties purchased under sale deeds dated 28.1.1931 and 20.6.1928 purchased from Jennadhana Mudaliar and Chengaiah Maistry respectively were alone settled in favour of the plaintiff and the documents covered under Exs.A1 and B2 only refer to the suit property, which is governed under Ex.B3 alone, but not under Ex.A2 recitals, rightly dismissed the suit concurrently.

Hence, holding that the Courts below have rightly construed the documents marked as Exs.A1, A2, B2 and B3, referred to above, and answering the substantial question of law accordingly, this second appeal is dismissed. No costs.

Index :Yes
Internet:Yes
atr/sasi

To:
1.The Subordinate Judge,
Poonamallee (with records).

2.The Additional District Munsif,
Poonamallee (with records).

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